HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NO.9994 OF 2006

-

Between:
Bhukya Kishan Naik S/o Jayaram Naik
H.No.7-70/49, Maheswari Nagar, Street No.8,
Habsiguda, Hyderabad and another

…Petitioners

A n d

The Government of Andhra Pradesh, rep. by its Principal Secretary,
Tribal Welfare Department, Secretariat, Saifabad, Hyderabad
and others

…Respondents

Counsel for petitioner : Sri S.Ramachandra Rao
assisted by Sri K.R.Prabhakar

Counsel for respondents : Sri C.V.Mohan Reddy
Advocate General

WRIT PETITION NO.9996 OF 2006

-

Between:

Bhuya Kishan Naik S/o Jayaram Naik
H.No.7-70/49, Maheswari Nagar, Street No.8,
Habsiguda, Hyderabad and another

…Petitioners

A n d

The Government of Andhra Pradesh, rep. by its Principal Secretary,
Tribal Welfare Department, Secretariat, Saifabad, Hyderabad
and others

…Respondents

:: **C O M M O N O R D E R** ::

Counsel for petitioner : Sri S.Ramachandra Rao
assisted by Sri K.R.Prabhakar

Counsel for respondents : Sri C.V.Mohan Reddy
Advocate General

-

Per G.V.Seethapathy, J

In these petitions, the petitioners have prayed for quashing notifications in

Rc.97/Acad-3/2006, dated 28-2-2006 and Rc.935/Acad-3/2006, dated 17-3-2006 issued by the State Government categorizing the members of Scheduled Tribes (`STs') into various groups for the purpose of admission into Andhra Pradesh Tribal Welfare Residential Schools of Excellence and Colleges of Excellence respectively.

In Writ Petition No.9994 of 2006, the petitioner has questioned the legality of notification in Rc.97/Acad-3/2006, dated 28.2.2006 pertaining to the admissions to the A.P. Tribal Welfare Residential Schools of Excellence and Writ Petition No.9996 of 2006 has been filed questioning the legality of notification Rc.935/Acad-3/2006, dated 17.3.2006 in respect of admissions to A.P. Tribal Welfare Residential Colleges of Excellence.

The petitioners have pleaded that because of extreme backwardness of the Scheduled Tribes, the Constitution framers have provided for reservation in their favour in the field of education and employment commensurate with their population and for giving effect to the mandate of the Constitution, the Government of Andhra Pradesh has made provision for 6% reservation in favour of the Scheduled Tribes. The petitioners complain that the impugned notification dated 28.2.2006 issued by the second respondent calling for applications from ST students for entrance test for admission into 8^{th}, 9^{th} and 10^{th} class in three schools of excellence (English Medium) run under the aegis of Andhra Pradesh Tribal Welfare Department for the purpose of imparting quality education and training to enable them to compete in the entrance tests for admission to IIT, IIIT, NIT and medical courses is violative of the constitutional principles of reservation and equality before law because it seeks to categorize STs into various groups. It has been further averred that no such categorization has been made in the matter of admission to such schools/colleges having telugu medium. According to the petitioners, there is only one list of Scheduled Tribes in the State notified by the President under Article 342(1) of the Constitution comprising a homogeneous group of STs for whom additional protection as a class is provided by way of reservation and so, any further classification or regrouping of the members of STs enumerated in the list, by the State either by a legislation or executive fiat would amount to tinkering with the presidential notification issued under Article 342 of the Constitution and the same is constitutionally impermissible. It is further pleaded that any inclusion in or exclusion from the list of the STs can only be done by Parliament under Article 342(2) of the Constitution of India and, therefore, any executive action or State legislation regrouping or disturbing or rearranging or reclassifying the STs mentioned in the list would be violative of Article 342(2) of the Constitution of India. The petitioners further complain that notifications dated 28.2.2006 and 17.3.2006, which seek to distribute the seats among different groups of STs giving preference to some of the groups over the others amounts to sub-classification of

the homogenous class of STs and is violative of Article 14 of the Constitution as it amounts to reverse discrimination. The petitioners have relied on the decision of the Constitution Bench of the Apex Court in E.V.Chinnaiah's case, wherein the A.P. Scheduled Castes (Rationalization of Reservations) Act, 2000 (A.P. Act 20 of 2000) was struck down as being violative of Article 341 and also Article 14 of the Constitution, and have pleaded that the impugned notifications are contrary to that judgment. In the affidavit filed on behalf of respondents, an attempt has been made to justify the impugned notifications on the premise that some of the Scheduled Tribes have remained most backward in spite of the policy of the reservation and affirmative action of the State and except few communities, namely, Sugalies, Lambadas and Yerukalas, the percentage of representation from the other communities among STs either in the matter of admissions to educational institutions or public employment is meagre. In the counter-affidavit, statistical data prepared by the Tribal Cultural Research and Training Institute, Tribal Welfare Department, Hyderabad, has been incorporated to show that the percentage of admission of students into professional colleges from the years 2003-2004 to 2005-2006 is 86.99% in respect of Sugalis, Lambadies and Yerukalas, whereas it is a meagre 1% from Primitive Tribal Groups and 11.95% from other 23 tribal groups. Similarly, in the matter of public employment, the representation of Sugali, Lambada and Yerukala groups among the STs is 83.65%, whereas it is only 1.89% in respect of Primitive Tribal Groups and 14.88% in respect of all other tribal groups. According to the respondents, if the seats are not distributed among different groups of STs as sought to be done in the impugned notifications and if the selections are to be based on common merit list, the Primitive Tribal Groups and other non-Primitive Tribal Groups among the STs would not be able to secure admission and large chunk of seats would be garnered by a few more advanced groups like Sugalies, Lambadas and Yerukalas to the detriment of all other groups among the STs.

The case of the respondents is that with a view to enhance the level of representation from the Primitive Tribal Groups and other not-so-advanced tribal groups, in the matter of admission to the educational institutions, certain number of seats are allocated in their favour for the purpose of admission in the schools and colleges of excellence run by the Tribal Welfare Department and the same does not amount to interfering with the list of STs notified under Article 342(1) of the Constitution of India. It is also the case of the respondents that the STs are different class altogether and they do not bear similarity with Scheduled Castes (`SCs') as some of the groups among STs inhabiting the Scheduled Areas are still in a primitive state and extremely backward and the Government of India also recognized and identified those primitive groups in various districts and directed the state Government to use its discretion in the matter of allotment of seats on the basis of literate

population of ST community, as the students belonging to those communities are unable to compete with other groups due to educational deficiency. It is also the contention of the respondents that the Fifth schedule of the Constitution provides that a special provision be made in respect of Scheduled Areas and Scheduled Tribes and as per the resolution of the A.P. Tribal Advisory Council dated 1.7.2005 in its 96th meeting heterogeneity within the homogeneous group of STs is sought to be rectified by making special provision and encouragement through colleges and schools of excellence. The second respondent, therefore, contended that the law applicable to the SCs, who are essentially residing in plain areas cannot be made applicable to the STs, who are residents of Scheduled Areas in view of their extreme backwardness and primitive conditions of living and hence the dicta of the Apex Court in E.V.Chinnaiah's case is not applicable to the present case.

Sri S.Ramachandra Rao, learned Senior Counsel appearing for the petitioners would contend that Articles 341 and 342 of the Constitution of India are couched in identical terms and the law laid down by the Apex Court in E.V.Chinnaiah's case, in respect of regrouping and sub-classification of SCs as being violative of Article 341 is mutatis mutandis applicable to any attempt to regroup or sub-classify the STs enumerated in the list notified by the President under Article 342 more so because the decision in E.V.Chinnaiah's case makes reference to the STs as well. He, therefore, contended that the impugned notifications seeking to allot certain number of seats to certain specified groups among STs in the matter of admission to the schools and colleges of Excellence to the detriment of other groups among STs would certainly tantamount to regrouping and micro classification of the homogeneous group of STs enlisted by the President in the notification issued under Article 342 of the Constitution. He further contended that the allotment of certain number of seats to some named groups among STs in the impugned notifications by way of preferential treatment to them would certainly deprive the opportunities of the other groups to compete for admission, which is violative of the equality doctrine enshrined in Article 14 of the Constitution of India as it amounts to discrimination in reverse.

Learned Advocate General appearing for respondents 1 and 2 contended that what is attempted by the impugned notification is only distribution of seats among various groups of STs with the object of empowering members of most backward groups inasmuch as the experience gained over the years reveal that the benefits of reservation policy were being garnered by a few groups like Sugalies, Lambadas and Yerukalas to the detriment of all other groups particularly Primitive Tribal Groups, whose percentage of representation in admission was only 1% and representation in public employment was only 1.89%. Learned Advocate General further contended that no attempt has been made to tinker with

the list of STs notified by the President under Article 342 of the Constitution nor the percentage of reservation, i.e., 6% fixed for the STs is sought to be disturbed as was attempted in E.V.Chinnaiah's case in respect of SCs. Learned Advocate General defended the impugned notifications contending that the State is bound to make special provisions in favour of STs for their advancement under the provisions of Fifth Schedule and in accordance with the resolution of the Tribal Advisory Council, which has, in its 96th meeting held on 1.7.2005 resolved that the backward tribes among STs be identified and special package/special weightages may be provided to them under different schemes like training programmes, coaching etc., to reduce the imbalances among different groups of STs.

We have given serious thought to the respective arguments.

It is not in dispute that by virtue of notifications impugned in the writ petitions, provision has been made for allotment of certain number of seats in favour of Primitive Tribal Groups and other tribal groups. In both the notifications, allotment of some seats in favour of certain named tribal groups is also contemplated. The distribution of seats among different tribal groups as contained in the two notifications is as follows:

ANDHRA PRADESH TRIBAL WELFARE DEPARTMENT, HYDERABAD
GURUKULAM
(ANDHRA PRADESH TRIBAL WELFARE RESIDENTIAL INSTITUTIONS SOCIETY) (regd))
(IIND FLOOR, DAMODHARAM SANJEEVAIAH WELFAREBHAWAN,
MASABTANK, HYDERABAD, PHONE-2339318.

Rc.No.97/Acad-3/2006 Dt.28.02.2006.

Entrance Notification for Scheduled tribe Girls and Boys in Pratibha Schools (School of Excel English Medium)

Applications are invited for admission into three Prathibha Schools (School of Exc functioning under the control of Tribal Welfare Department since 2005-2006. The Selection of bright S and Boys from 8th Class through conducting entrance test on merit basis in English medium for fou IIT, IIIT, NIT and Medicine. The selected students will be given free education, boarding and other faci

Name of the School, allotted Districts, the information of seats of academic year 2006-20(

The respondents have tried to justify the above distribution of seats among some of the tribal groups on the ground that they remained most backward in spite of the reservation policy being in vogue for several decades inasmuch as the benefits of such reservation have all along been enjoyed by more literate and advanced groups among STs. The objective and purpose behind such distribution of seats is said to be based on empirical data collected by the Tribal Welfare Department. The statistical data furnished in the counter affidavit of the second respondent in respect of previous three consecutive years 2003-2006 no doubt shows that representation of three groups, namely Sugalies, Lambadas and Yerukalas in the matter of admission to educational institutions or public

employment is far greater than the Primitive Tribal Groups and other tribal groups. The above three tribal groups of Sugalies, Lambadas and Yerukalas account for 86.99% of admissions into professional colleges as against a meagre 1% of 8 Primitive Tribal Groups and 11.95% of the remaining 23 other tribal groups. Similarly, in the matter of employment, the same three groups of Sugalies, Lambadas and Yerukalas have taken a major chunk of 83.65% whereas 8 Primitive Tribal Groups are marginalized with a meagre 1.89% and the remaining 23 other tribal groups account for 14.49%. The correctness of the above data collected officially by the Tribal Welfare Department through Tribal Culture Research and Training Institute has not been questioned by the petitioners. Rather, the only contention raised by them is that such distribution of seats allocating certain number of seats to certain groups among STs amounts to regrouping/micro-classification, besides being discriminating, which is constitutionally impermissible. In our opinion, the statistical data projecting the plight of the Primitive Tribal Groups and other tribal groups who are totally marginalized in the matter of admission into educational institutions and public employment, no doubt, justifies affirmative and positive action by the State machinery to enhance their level of representation by providing sufficient opportunities to compete with other groups in the matter of education or employment. However, any such capacity building measures will have to necessarily be constitutionally acceptable without violating any of the constitutional mandates.

The question which therefore arises for consideration is whether the impugned notifications providing for allotment of some seats in the matter of admission to the Schools and Colleges of Excellence in favour of some of the groups among the STs amounts to regrouping/sub classification of the STs enlisted in the notification issued by the President under Article 342 and is therefore unconstitutional.

Article 342 of the Constitution reads as follows:

> **342**. **Scheduled Tribes**.—(1) The President [may with respect to any State [or Union territory], and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State[or Union territory, as the case may be].
> (2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause(1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

The expression “Scheduled Tribes” is defined under Article 366 (25) to the following effect:

"**Scheduled Tribes**" means such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of this Constitution.

A combined reading of the above two provisions of the Constitution makes it abundantly clear that the "Scheduled Tribes" for the purpose of the Constitution are such tribes or tribal communities or part of or groups within such tribes or tribal communities, which are specified by the President by notification, after consultation with the Governor of the concerned State and it is only the Parliament, which may, by law, include in or exclude from the list of STs so notified, any tribe or tribal community or part of or group thereof and the list shall not be varied otherwise by any subsequent notification. The list of STs notified by the President is thus sacrosanct and is not amenable to any sort of modification or variation except to the extent of inclusion in or exclusion from the said list, any tribe or tribal community or part of or group within thereof, that too, by Parliament by way of law.

The question as to whether regrouping or reclassifying the groups or communities mentioned in the list of SCs notified by the President under Article 341 of the Constitution in order to provide/ distribute the benefits of reservation equitably among SCs by way of a legislation of the State amounts to tinkering with the list of SCs notified by the President under Article 341 came up for consideration by the Apex Court in **E.V.Chinnaiah v. State of Andhra Pradesh and others**[1]. In that case, the constitutionality of Andhra Pradesh Scheduled Castes (Rationalization of Reservations) Act, 2000 passed by the State legislature categorizing the Scheduled Castes enlisted in the notification issued under Article 341 into A, B, C, D groups and providing for different percentages of reservation, i.e., 1%, 6%, 7% and 11% to those groups respectively without adding to or deleting any community or group from the notified list, was considered by the Supreme Court. While reversing the judgment of Full Bench of this Court, which upheld the vires of the Act, the Constitution Bench of the Apex Court struck down the Act holding that the impugned legislation apart from being beyond legislative competence of the State is also violative of Article 14 of the Constitution.

The questions formulated by the Constitution Bench were:

(1) Whether the impugned enactment is constitutionally invalid for lack of legislation competence?
(2) Whether the impugned enactment creates sub-classification or micro classification of Scheduled Castes so as to violate Article 14 of the Constitution of India?

On question No.1, the Apex Court held that:

"Therefore any executive action or legislative enactment which interferes, disturbs, re-arranges, re-groups or re-classifies the various castes found in the Presidential List will be violative of scheme of the Constitution and will be violative of Article 341 of the Constitution".

On question No.2, it was held that:

"From the discussion hereinabove, it is clear that the primary object of the impugned enactment is to create groups of sub-castes in the list of Scheduled Castes applicable to the State and, in our opinion, apportionment of the reservation is only secondary and consequential. Whatever may be the object of this sub-classification and apportionment of the reservation, we think that State cannot claim legislative power to make a law dividing the Scheduled Castes list of the State by tracing its legislative competence to Entry 41 of List II or Entry 25 of List III. Therefore, we are of the opinion that in pith and substance the enactment is not a law governing the field of education or the field of State Public Services."

On question No.3, the Apex Court held that:

"Legal or constitutional policy adumbrated in a statute must answer the test of Article 14 of the Constitution of India. Classification whether permissible or not must be judged on the touchstone of the object sought to be achieved. If the object of reservation is to take affirmative action in favour of a class which is socially, educationally and economically backward, the State's jurisdiction while exercising its executive or legislative function is to decide as to what extent reservation should be made for them either in public service or for obtaining admission in educational institutions. In our opinion, such a class cannot be sub-divided so as to give more preference to a miniscule proportion of the Scheduled Castes in preference to other members of the same class".

It was further held that:

"The conglomeration of castes given in the Presidential Order, in our opinion, should be considered as representing a class as a whole. The contrary approach of the High Court, in our opinion, was not correct. The very fact that a legal fiction has been created is itself suggestive of the fact that the Legislature of a State cannot take any action, which would be contrary to or inconsistent therewith. The very idea of placing different castes or tribes or groups or part thereof in a State as a conglomeration by way of a deeming definition clearly suggests that they are not to be sub-divided or sub-classified further. If a class within a class of members of the Scheduled Castes is created, the same would amount to tinkering with the list. Such sub-classification would be violative of Article 14 of the Constitution of India".

One of the points raised on behalf of the State was that some particular groups within the Scheduled Castes have cornered all the benefits at the cost of others in the said list and, therefore, with a view to see that the benefit of reservation percolates to the weaker of the weakest, it had become necessary to enact the impugned law and by regrouping the castes in the Scheduled Caste list, there is no reclassification or micro-classification. Rejecting the above contention, the Apex Court held that the members of the Scheduled Castes form a

class by themselves and any further classification would be impermissible while applying the principle of reservation. Some of the observations made on this issue are extracted below:

> "If benefits of reservation are not percolating to them equitably, measures should be taken to see that they are given such adequate or additional training so as to enable them to compete with the others but the same would not mean that in the process of rationalizing the reservation to the Scheduled Castes, the constitutional mandate of Articles 14, 15 and 16 could be violated".

In his separate judgment but concurring opinion,

S.B.Sinha, J held as under:

> "The President of India is the sole repository of the power to specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of the Constitution be deemed to be Scheduled Castes.
>
> Clause (2) of Article 341 of the Constitution confers power only on the Parliament to include therein or exclude therefrom castes, races or part or group within any caste etc. By reason of the provisions of the said Act, the members of the Scheduled Castes specified for the State of Andhra Pradesh had been divided in four different categories and reservations both in public office as also in education had been earmarked in the manner specified therein.
>
> There appears to be no good reason for classifying the Backward Classes of citizens in four categories; as noticed in the judgment of Brother Hegde, J. and furthermore the Scheduled Caste Order and Scheduled Tribe Order provide for conglomeration of castes and tribes and, thus, must be treated as a distinct and separate class for the purpose of the Constitution. We may notice that there is no such express provision in the Constitution in respect of "Other Backward Class".
>
> Our Constitution permits application of equality clause by grant of additional protection to the disadvantaged class so as to bring them on equal platform with other advantaged class of people. Such a class which requires the benefit of additional protection, thus, cannot be discriminated inter se, i.e., between one member of the said class and another only on a certain presupposition of some advancement by one group over other although both satisfy the test of abysmal backwardness as also inadequate representation in public service.
>
> The constitution makers inserted Articles 341 and 342 with a view to provide benefits to the members of the scheduled castes and Scheduled Tribes as being belonging to a socially, educationally and economically backward class of citizens. Any legislation which would bring them out of the purview thereof or tinker with the order issued by the President of India would be Unconstitutional.
>
> When a classification is made which is per se violative of the constitutional provisions, the same cannot be upheld. While reasonable classification is permissible what would be impermissible is micro classification or mini classification.
>
> It is furthermore not in dispute that if such a decision is made the State can also lay down a legislative policy as regard extent of reservation to be made

for different members of the Backward Classes including Scheduled Caste. But, it cannot takeaway the said benefit on the premise that one or the other group amongst the members of the Scheduled Casts has advanced and, thus, is not entitled to the entire benefit of reservation."

In the above case, it was noticed that some of the Scheduled Caste groups like Relli and Adi Andhras are hardly educated and only 2% of the members of the said community has studied in secondary school and none was ever admitted in any engineering or professional disciplines. It was noted that unless the said community is educated, provision, both for education as also public service would be a myth for them and ultimately in view of the impugned legislation for all intent and purport, the benefit thereof would go to other categories. It was, therefore, observed that what was necessary in such a situation was to provide to them scholarships, hostel facilities, special coaching etc so that they may be brought on same platform with others. Similar is the situation in the present case as well. In the name of providing opportunities to some of the groups among Scheduled Tribes, who were considered to be most backward, earmarking of a particular number of seats for them at the cost of other groups is not permissible when all the groups comprised in the list of Scheduled Tribes constitute a homogeneous entity. In E.V.Chinnaiah's case, while making a reference to the Scheduled Tribes, it was further held:

" The provisions of Article 330(1)(b)(c) show that the Constitution has treated Scheduled Tribes in the autonomous districts of Assam as a separate category distinct from all other Scheduled Tribes. This clearly indicates that when the Constitution-makers wanted to make a sub-classification of Scheduled Tribes, they have themselves made it in the text of the Constitution itself and have not empowered any Legislature or Government to make such a sub-classification. Except, to the extent the Constitution itself makes a sub-classification, there cannot be grouping of Scheduled Castes into different categories for different treatment. Only exclusion of castes, parts or groups within the castes is contemplated by law made by Parliament, but not sub-classification of Scheduled Castes and that too on the basis of caste".

The above observations pertaining to STs have a direct bearing on the present case and in that view of the matter, it must be held that the State cannot make sub-classification among Scheduled Tribes. The allotment of certain number of seats to a particular group among Scheduled Tribes necessarily involves exclusion of the other groups from competing in respect of those seats. In other words, certain groups are given a specific identity and preference over the other groups, which certainly amounts to treating them as a class apart, which necessarily amounts in practical terms to further classification or regrouping within the homogeneous class of Scheduled Tribes. Such an exercise, even for a limited purpose of admission to a few institutions, as sought to be done by way of impugned notifications is totally impermissible being violative of equality doctrine enshrined under Article 14 of the Constitution of India besides amounting to tinkering with the notification issued by the

President under Article 342, which is again impermissible. The ratio of the decision in E.V.Chinnaiah's case is squarely applicable to the present case as well, inasmuch as the Scheduled Tribes notified by the President under Article 342 constitute a homogeneous group like Scheduled Castes notified under Article 341.

Even assuming that the Primitive Tribal Groups and other groups among Scheduled Tribes are most backward and they need preferential treatment to enable them to compete with others, still, the affirmative action initiated by the State to uplift them should meet the constitutional requirements and cannot be violative of the constitutional provisions and once it is found that in the name of distribution or allotment of seats to some of the tribal groups in preference to others groups, the State resorted to make a further division or classification of the tribal groups disturbing their homogeneous character as is attempted in the impugned notifications, it amounts to tinkering with the list of Scheduled Tribes notified by the President under Article 342 (1) of the Constitution.

The contention of the respondents 1 and 2 that the entries of the Scheduled Tribes contained in the notified list are kept in tact and the impugned notifications do not in any way cause inroads into the sanctity of the list does not merit consideration for the reason that the allotment of some seats to particular tribal groups to the exclusion of other tribal groups amounts to treating those preferred groups as a class by themselves, which is not permissible in view of the provisions of Article 342 and the decision of the Apex Court in E.V.Chinnaiah's case.

The next question, which arises for consideration is whether the impugned notifications stand the test of equality doctrine enshrined under Article 14 of the Constitution, which prohibits discrimination in any form. Articles 15 and 16 enable the State to make special provisions with regard to advancement of the Scheduled Tribes in the matter of admission into educational institutions or public employment. The expression "Scheduled Tribes" as defined under Article 366 (25) has to be read with
Article 342 in which event, the measures contemplated by the State for advancement of the cause of the Scheduled Tribes have to be extended in equitable terms to all the members of the groups enumerated in the list of STs, as they constitute one homogeneous entity. No discrimination inter se among those groups is permissible inasmuch as preferential treatment to select groups necessarily proves detrimental to the interests of the other groups. Allotment of certain number of seats in favour of specified groups amongst Scheduled Tribes amounts to depriving the other groups of the benefit of competing for those seats. Such inequitable distribution of seats resulting in deprivation of opportunities to some of the groups amongst the Scheduled Tribes who are also backward and entitled for protection by virtue of the constitutional mandates certainly offends against the doctrine

of equality enshrined under Article 14 of the Constitution.

The next contention of the respondents 1 and 2 is that by virtue of the provisions contained in Fifth Schedule of the Constitution of India, the State is barred to make special provision in regard to advancement of the Scheduled Tribes, especially when the Tribal Advisory Council has also made a recommendation to that effect and so, what holds good in case of Scheduled Castes, whose members are essentially residents of plain areas cannot be made applicable pari materia to the members of Scheduled Tribes, most of whom are inhabitants of Scheduled Areas and living under primitive conditions. In the 96th meeting held on 1.7.2005, the Tribal Advisory Council is said to have resolved that heterogeneity in homogenous group of Scheduled Tribes may be rectified by making special provision and encouragement through Schools and Colleges of Excellence.

Article 244-A of the Constitution mandates that the provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. Fifth Schedule makes provision as to the administration and control of Scheduled Areas and Scheduled Tribes. Part B of Fifth Schedule mandates that it shall be the duty of the Tribes Advisory Council to advise on such matters pertaining to the welfare and advancement of the Scheduled Tribes in the State as may be referred to them by the Governor. Proviso 5(2) of the Fifth Schedule states that the Governor may make regulations for the peace and good government of any area in a State, which is for the time being a Scheduled Area.

Proviso 5(4) of the Fifth Schedule states that all regulations made under this paragraph shall be submitted forthwith to the President, and, until assented to by him, shall have no effect. Proviso 5 (5) of the Fifth Schedule mandates that no regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council.

A reading of the above provisions shows that in the matter of administration of the Scheduled Areas, the Governor of the State is vested with certain powers which among others include making the regulations for peace and good government of the Scheduled Area and such regulation shall be made after consultation with the Tribes Advisory Council and it shall be submitted to the President for assent before any effect is given thereto.

The present case is not one where any such regulation is made by the Governor in terms of the provisions of the Fifth Schedule based on the recommendations of the Tribes Advisory Council pertaining to Scheduled Area. The impugned notifications are mere executive actions pertaining to all the members of scheduled tribes whether residing in Scheduled Area or outside. The reference to the provisions of the Fifth Schedule has,

therefore, no relevance to the fact situation obtaining in the present case. Any affirmative action initiated by the State for advancement of the Scheduled Tribes, a salutary effort, no doubt, shall, however, be in conformity with the provisions of the Constitution and not in violation thereof. The contention of the respondents 1 and 2 with reference to the provisions of the Fifth Schedule of the Constitution is therefore wholly misconceived.

In the result, the writ petitions are allowed and the impugned notifications are quashed. The respondents shall now make admissions ignoring the sub-classification of the Scheduled Tribes made in terms of the impugned notifications.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

21-09-2006

RAR

HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT PETITION NOs.9994 & 9996 OF 2006

(Common Order of the Bench pronounced by
Hon'ble Shri Justice G.V.Seethapathy

DATED : 09-2006

---

[1] 2005(1) ALD 102 (SC)